

FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

**THURSDAY
JULY 19, 2012
8:00 A.M.**

PLANNING DEPARTMENT CONFERENCE ROOM

MEETING NOTES

PRESENT:

JOE GILLIS, CHAIRMAN
LEN HOUSE, VICE CHAIRMAN
FRAN REED, TREASURER
TODD RULISON, SECRETARY
WILLIAM SULLIVAN, MEMBER
ARLENE M. SITTERLY, MEMBER
JOSEPH SEMIONE, MEMBER
JAMES MRAZ, IDA EXECUTIVE DIRECTOR
KARA LAIS, FITZGERALD, MORRIS, BAKER, FIRTH, P.C.
MIKE REESE, PRESIDENT, FULTON COUNTY CENTER FOR REGIONAL GROWTH

I. MINUTES FROM JUNE 19, 2012 MEETING:

MOTION : Accept as presented.
MADE BY : Todd Rulison
SECONDED : Arlene Sitterly
VOTE : Unanimous

II. BUDGET REPORT:

MOTION : Accept as presented.
MADE BY : Arlene Sitterly
SECONDED : Len House
VOTE : Unanimous

III. COMMITTEE REPORTS:

A. Nominating Committee:

- No report.

B. Audit Committee:

- No report.

C. Governance Committee:

- Jim Mraz stated the Governance Committee has not met and does not have a report to provide. He stated, however, he was distributing at this meeting a letter to the Governance Committee asking for a meeting to review the proposed new Uniform Tax Exemption Policy (UTEP) that he has drafted. He reminded IDA members that he advised the Board at a recent meeting that he was working on an updated UTEP. He stated he prepared an initial draft and forwarded it to Kara Lais to review. Kara provided many excellent comments, all of which have been incorporated into the proposed policy. He stated he provided the Governance Committee members with a copy of the proposed UTEP, as well as the existing UTEP. He stated that he would be contacting Committee members in the near future to setup a meeting to review the proposed UTEP in hopes that the Committee can make a recommendation to the full IDA Board regarding the potential adoption of an updated UTEP.

D. Finance Committee:

- No report.

IV. **OLD BUSINESS:**

A. 1988 Incubator Building Project in Crossroads Industrial Park:

- No new information to report.

B. Tryon Technology Park and Incubator Center Project:

1. ESD Grant:

- a. Fulton County has awarded a contract to C.T. Male to perform the planning, design and engineering work.

2. Agreement between the IDA, NYSOGS and ESD:

a. Status:

- Final draft of Agreement between IDA, NYSOGS and ESD has been prepared.
- The execution of this Agreement would initiate a process that would lead to the former Tryon Campus being deeded over to the IDA.

b. Phase I Environmental Site Assessment (ESA) and Asbestos Testing:

- Agreement with C.T. Male has been prepared and sent to C.T. Male for signature.
- C.T. Male has signed the agreement and returned it to the IDA.
- Work will commence once Agreement with State is executed by State Comptroller.

c. Title Search and ALTA Title Policy:

- Agreement with Carol's Abstracting has been prepared and sent for signature.
- Carol's Abstracting has signed the Agreement and returned it to the IDA.
- Work will commence once Agreement with State is executed by State Comptroller.

IDA DISCUSSION: Jim Mraz stated that the agreements with C.T. Male and Carol's Abstracting have been signed. He stated the Chairman will be signing those agreements on behalf of the IDA today. He stated those agreements will be held until such time as the agreement with New York State has been executed. Once that State agreement has been executed, these agreements will be released and work will get started.

C. CG Roxane Water Bottling Plant Project:

1. Project Application:

- IDA received and reviewed at its June 19, 2012 meeting a Project Application from CG Roxane, LLC of San Francisco, CA.

2. Project Description:

- CG Roxane proposes a 2-phase project to build and operate a spring water bottling plant on an approximately 72- acre parcel of land (Tax Parcel #146.-1-31) located at 325 Watershed Road in the Town of Johnstown.
- Phase 1 will include a 176,757 square foot (SF) building, two (2) operational production lines, one (1) future production line, access roadways, car and truck parking, stormwater management facilities and the redevelopment of Old Sweet Road. One production line will produce 0.5 liter bottles and the second production line will produce 1 gallon bottles.

3. Project Structure:

- CG Roxane's Application requests that CG Roxane enter into a straight lease arrangement with the IDA.
- The IDA would take title to the land and improvements on the land and then enter into a Lease Agreement with CG Roxane to lease the land and improvements back to the Company to operate.
- No IDA financing is being requested.

4. Application for Tax Exemption:

a. Background:

- CG Roxane has requested two (2) tax exemptions from the IDA:
 - 1) 485-b real property tax exemption.
 - 2) Sales tax exemption.

b. Public Hearing:

- CG Roxane estimated the value of the tax exemptions to exceed \$100,000.
- As a result, the IDA conducted a public hearing on Wednesday, July 11, 2012 at 4:00 p.m. in Town of Johnstown Town Hall.
- Minutes from the public hearing have been prepared and were distributed to IDA members on July 12, 2012.
- Review minutes of Public Hearing.

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda regarding the CG Roxane Project. He stated that three (3) members of the Town Board spoke at the public hearing. He stated they raised concerns regarding the Town Board not having been previously advised that CG Roxane would be applying for a PILOT. He stated there was also some misunderstandings as to what impacts the PILOT would have tax collections by the Town of Johnstown. He stated he spoke with Nancy MacVean, Town Supervisor, the next day. Based upon that conversation, he prepared two (2) spreadsheets that projected the amount of Town taxes that would be generated by the Town of Johnstown if the 485-b tax exemption was approved. He provided copies of those spreadsheets to Supervisor MacVean for her to distribute and review at the July 12 Town of Johnstown Town Board workshop meeting. He said he spoke with Supervisor MacVean on Friday, July 13th. Supervisor MacVean stated that she distributed that information to the Town Board and the information addressed some of their concerns regarding how much taxes the Town Board would be generated if the 485-b PILOT was granted. Jim Mraz stated that the Town Board asked if the clawback type provisions could be included into the PILOT. He explained that a clawback provision would require the company to repay some or all of the property tax benefits the company realized from a PILOT if the company leaves the area within a certain period of time. He stated he spoke with CG Roxane regarding that concept and CG Roxane indicated that they would be comfortable with a clawback provision. There was a brief discussion amongst IDA members on the value of a clawback provision and whether it could be a distraction to companies wanting to move into this area. Kara Lais added if CG Roxane is willing to execute a PILOT with a clawback provision in it, this should create no issue with the company.

IDA ACTION:

MOTION: To approve the minutes of the July 11, 2012 Public Hearing as presented.

MADE BY: Joseph Gillis

SECONDED: Joseph Semione

VOTE: Unanimous

5. Project Operator:

- General Municipal Law requires IDA's to notify the NYS Department of Taxation and Finance every time an IDA appoints an Agency or Project Operator for the purposes of extending sales and use tax exemptions.
- Form ST-60 must be submitted within thirty (30) days of the IDA's Appointment of a Project Operator/Agent for Sales Tax Purposes.
- Date Project Operator to be appointed : July 19, 2012
- Date Project Operator status will end : July 19, 2014

6. Preliminary Agreement:

- Kara Lais has prepared a Preliminary Agreement between the IDA and CG Roxane.
- The Preliminary Agreement outlines the IDA's and CG Roxane's rights and duties with respect to the proposed project, outlines the structure of the project and designates CG Roxane as the IDA's Project Operator.
- This Preliminary Agreement would remain in effect until the Lease Agreement is executed.
- The Preliminary Agreement was distributed to IDA members on July 16, 2012.
- Review Preliminary Agreement.

7. Inducement Resolution:

- Kara Lais has prepared an Inducement Resolution for the IDA Board to act on.
- Review Inducement Resolution.

IDA DISCUSSION: Kara Lais reviewed both the Preliminary Agreement and Inducement Resolution being presented to the IDA Board. She explained that the Preliminary Agreement sets out where what the expectation and obligations for both the IDA and CG Roxane would be regarding this particular project. She said the three (3) primary components of the Preliminary Agreement include:

1. Ratifying and accepting the SEQR findings made by the Town of Johnstown Planning Board. The Town of Johnstown Planning Board served as SEQR Lead Agency for the purpose of conducting a Coordinated SEQR Review on the proposed CG Roxane Water Bottling Plant Project. The Town Planning Board issued a Negative Declaration under SEQR. The Preliminary Agreement acknowledges such and states that the IDA accepts the Negative Declaration issued by the Town of Johnstown.
2. CG Roxane agrees to deed the land, buildings and equipment to the IDA and that the IDA agrees to lease them back to CG Roxane.
3. The IDA shall designate CG Roxane as the IDA's Agent for the purposes of sales tax exemptions. The Agreement states that the Chairperson would be authorized to execute and file the SP-60 Form and to execute an Exemption Letter with respect to the sales tax exemption. The sales tax exemption would apply for the period of construction. The period of construction would be two (2) years. The IDA would have the ability to extend that 2-year time period if requested by CG Roxane.

Joe Gillis asked how long the lease and PILOT Agreements would be for. Kara Lais stated ten (10) years.

Jim Mraz asked if there were any further questions regarding the Preliminary Agreement and Inducement Resolution. There were none.

IDA ACTION

MOTION: Approve an Inducement Resolution to take preliminary action toward undertaking the CG Roxane Project, appoint CG Roxane LLC, Agent of the Agency for the propose of constructing and equipping the project facility and filing an ST-60 form with NYS Taxation and Finance and authorizing the Chairman to execute a Preliminary Agreement by and between the IDA and CG Roxane LLC subject to the final approval of IDA Counsel.

MADE BY: Fran Reed

SECONDED: Joseph Gillis

VOTE: Unanimous

8. Next Steps:

- CG Roxane must provide the IDA with the following items:
 - Copy of deed
 - Copy of Survey Map certified to IDA
 - Title Commitment

- Certified company formation documents
- Certificates of Good Standing in NY and CA
- Authorizing Resolution of transaction and Agreement
- Insurance Certificates naming the IDA as additional insured.
- Legal Opinion

D. IDA's Mission Statement:

1. Notice from Authority Budget Office (ABO):

- On June 7, 2012, the ABO notified the IDA by e-mail that the IDA's current Mission Statement does not adequately meet the criteria described in Policy Guidance 10-02 "Public Authority Mission Statements and Measurement Reports".
- The ABO has asked the IDA to reevaluate the current Mission Statement and develop a Mission Statement that better reflects the intent of the statutory requirement of 2821 of Public Authorities Law and the policy guidance provided by the ABO.
- Jim Mraz e-mailed the ABO and asked for the specific issues the ABO wanted the IDA to address.
- The ABO recommended that the IDA Board reevaluate the submitted mission statement in order to more fully address:
 - Who are the authority's stakeholders?
 - What are the values (i.e. philosophy and guiding principles) of the authority?
- The ABO has requested that a revised Mission Statement be submitted to them by October 1, 2012.

2. IDA's Current Mission Statement:

"To promote and develop the retention of existing and creation of new job opportunities and the expansion of local property tax base by acquiring, owning, developing, managing and selling land and buildings and providing financing and tax incentives as authorized by New York State."

3. IDA's Proposed New Mission Statement:

- **The IDA's mission is to create and promote economic growth and prosperity for the residents of Fulton County. To do so, the IDA develops and maintains an inventory of shovel-ready sites that can be offered to new and expanding businesses. The Agency also offers financial incentives, as may be required, to encourage the creation of new and retention of existing jobs and expand the County's tax base. The IDA is a component of Fulton County's Economic Development Team that strives to make Fulton County a desirable place to live and do business.**

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. He stated that he drafted a new Mission Statement based upon his review of numerous other IDA Mission Statements. There was a brief discussion regarding the proposed new Mission Statement. It was agreed that the Governance Committee should meet and review the proposed Mission Statement before the full IDA Board acts on it. As a result, the proposed new Mission Statement as drafted was referred to the Governance Committee for their review and recommendation.

V. NEW BUSINESS:

A. Marketing Agreement:

1. Background:

- The IDA's current Marketing Agreement is with the Fulton County Economic Development Corporation.
- It is proposed that the IDA enter into a new Marketing Agreement with the Fulton County Center for Regional Growth. The current Marketing Agreement is for 2011 and 2012.
- The proposed new Agreement would run from July 19, 2012 through December 31, 2012.

IDA DISCUSSION: Jim Mraz stated that Mike Reese has asked for the IDA to authorize entering into a new Marketing Agreement with the FCCRG. Mike Reese advised that the FCCRG has taken over the marketing responsibilities that were previously provided by the EDC.

IDA ACTION

MOTION: To authorize the Chairman to execute a new Marketing Agreement with the Fulton County Center for Regional Growth that includes the same terms and conditions as the existing Marketing Agreement with the Fulton County Economic Development Corporation with the term of this new Agreement to be from July 19, 2012 to December 31, 2012.

MADE BY: Arlene Sitterly

SECONDED: Fran Reed

VOTE: 4 in favor, 2 abstained (Todd Rulison, Bill Sullivan)

VI. OTHER BUSINESS:

A. Proposed Policy and Legislative Changes from Authority Budget Office:

1. Clarify the Definition of a Covered Local Authority:

The ABO recommends that the definition of a local authority should be amended to make clear that the Legislature intended to cover those not-for-profit corporations that were formed primarily for a public purpose or to achieve a governmental objective. Not-for-profit corporations formed exclusively for non-business purposes or professional, civic, commercial, educational or religious associates were not intended to be subject to ABO oversight. Covered local authorities should include not-for-profit corporations that have public officials as directors, have the authority to issue tax exempt debt or to provide other tax exemptions through participation in public projects, manage revolving loan funds capitalized with public funds, or have been delegated independent authority to manage public projects or to act as the agent of a municipal government.

2. Require Formal Response to ABO Compliance Review Findings and Recommendations:

The ABO recommends that the Legislature consider requiring any authority that is the subject of an ABO compliance review, to formally respond in writing to the recommendations advanced in the final report. The public has a right to expect that the authority would address the issues raised by that review and either develop a corrective action plan or go on record explaining why the ABO's recommendations will not be accepted.

3. Enhanced Enforcement Authority:

The ABO has insufficient resources to enforce compliance or compel reporting by public authorities or to take action against those authorities that provide inaccurate, incomplete or misleading information, intentionally or unintentionally fail to comply with any statutory requirement, fail to take corrective action when notified of such failure, or when a failure of the board to exercise its proper fiduciary or oversight responsibilities has been identified. In the absence of providing the ABO with the staffing resources necessary to meet the public and statutory expectations for the Office, the ABO requests that consideration be given to granting it the ability to assess fines, suspend directors or curtail certain activities of an authority and its board determined to be chronically out of compliance or deficient in performing its fiduciary duty.

4. Amend State Law to Promote Greater Efficiency and to Streamline Local Economic Development Agencies:

Currently, there are more than 380 local authorities created for the primary purpose of promoting economic development, job creation and job retention. This proliferation is not conducive to making sound, coordinated, and mutually beneficial economic development decisions. The state should consider legislation to:

- a. Create a statutory framework to encourage and facilitate the consolidation and voluntary termination of industrial development agencies (IDA).
- b. Authorize the formation by local governments of a new economic development authority type that would combine the powers and purposes of IDAs and LDCs. This would eliminate the need to form, incorporate or continue multiple entities to finance civic facility projects, acquire municipal property, make loans, or offer tax exemptions. This new entity should be established as a public benefit corporation, subject to the accountability, transparency, disclosure and reporting requirements of the Public Authority Accountability Act and the Public Authority Reform Act and should only be authorized locally upon the termination of existing IDAs and LDCs serving that municipality and the transfer of their assets and liabilities to this new entity.
- c. Alternatively, require municipal governments to get the approval of the state legislature before creating a local development corporation, consistent with the authorization required for the formation of other local authorities.
- d. Establish uniform project approval and financial assistance criteria for all industrial development agencies within a county or defined metropolitan area to minimize “comparison shopping” by local businesses willing to relocate within the area in exchange for a beneficial financial assistance package.
- e. Require not-for-profit corporations incorporated to achieve a lawful public or governmental business objective to submit the certificates of incorporation to the ABO for a determination of coverage under PAAA and PARA.

5. Amend Section 2976 of Public Authorities Law to Subject Debt Issued by Local Development Corporations to the Bond Issuance Charge:

Public benefit corporations and industrial development agencies are charged a fee by the state each time they issue bonds. Not-for-profit corporations that fall within the definition of a local authority pursuant to Section 2(2) of Public Authorities Law, such as local development corporations (LDC), have not been subject to this charge. This fee ranged from 0.168 percent of the principal amount of the bonds to 0.84 percent. For purposes of equity, and to discourage the formation of such entities, the Public Authorities Law should be amended to subject LDCs to this bond issuance charge. Based on the principal amount of new debt issued in 2011 by these corporations, the state could have realized between \$1.9 million and \$9.7 million in new revenue had this charge been in effect last year, and an additional \$1.6 million to \$8.1 million had the charge been in effect for bonds issued in 2010.

6. Other Potential Legislative Changes:

Consideration should also be given to amending the General Municipal Law to:

- a. Limit the circumstances or types of project applications for which financial assistance can be awarded. State law should be more specific whether businesses that have already made a strategic business decision that it would be profitable to relocate or expand in a community should qualify for financial assistance, or whether it is appropriate for public funds to be used to assure the profitability or viability of a project that could not be sustained without such assistance.
- b. Establish shorter and renewable PILOT periods. The timeframes for most tax exemption and PILOT agreements extend for ten (10) years or more. Local communities are asked to make upfront financial commitments in exchange for promises that, over the life of the agreement, the return on investment will

be beneficial. Often it is difficult to assess the “success” of this investment during the lifecycle of the project and, by the end of the project, it may be difficult to recapture some of this assistance if the project failed to meet its original job projections. By limiting PILOT periods to five (5) years, while allowing those agreements to be renewed, an IDA and the involved taxing jurisdictions would have leverage to assure that the project is on track to meet its commitments and could terminate or adjust financial assistance much earlier and at less cost should the outcome of the project become doubtful.

B. Interest Assessment Surcharge:

- On July 18, 2011, the IDA received a Notice from the NYS Department of Labor stating:
 - Since 2009, New York State has borrowed over **\$3 billion** from the federal Unemployment Insurance (UI) Trust Fund.
 - New York had to pay approximately **\$95 million in interest** on the \$3+ billion in loans to the federal government by September 30, 2011.
 - In order to pay the interest due for 2011 on these federal loans, New York State is required by state law to assess a temporary charge on employers, called an Interest Assessment Surcharge (IAS). Should Congress extend the interest-free loan provision, the surcharge would be refunded.
 - New York’s Interest Assessment Surcharge rate for 2011 is 0.25%. Each employer’s surcharge amount is determined by multiplying the total taxable wages in the most recently completed payroll year (October 1, 2009 through September 30, 2010) by the IAS rate of 0.25 percent. The maximum amount that most employers will be assessed is \$21.25 per employee. The IDA paid \$21.25 in 2011.
- On July 6, 2012, the IDA received another notice from the NYS Department of Labor stating:
 - New York State has now borrowed over **\$4 billion** from the federal Unemployment Insurance Trust Fund.
 - New York State now has to pay **\$102 million in interest** on this loan by September 30, 2012.
 - Federal interest rate on this loan is lower in 2012. This lowers New York State’s Interest Assessment Surcharge (IAS) to 0.15 percent from 0.25%.
 - IDA’s 2012 IAS is \$12.75.

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. There was a general consensus that this is another State mandate so it has to be paid. IDA members expressed their frustration with being forced to make this payment.

IDA ACTION:

MOTION: To authorize the payment of \$12.75 as the IDA’s 2012 Interest Assessment Surcharge.

MADE BY: Joseph Semione
SECONDED: William Sullivan
VOTE: Unanimous

C. Executive Session:

1. Background:

1. Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for the below enumerated purposes only, provided, however, that no action by formal vote shall be taken to appropriate public moneys:
 - i. matters which will imperil the public safety if disclosed;
 - ii. any matter which may disclose the identity of a law enforcement agent or informer;
 - iii. information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
 - iv. discussions regarding proposed, pending or current litigation;
 - v. collective negotiations pursuant to article fourteen of the civil service law;
 - vi. **the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;**
 - vii. the preparation, grading or administration of examinations;
 - viii. the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

MOTION: To go into Executive Session to discuss, **“the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation.”**

MADE BY : Joseph Gillis
SECOND : Todd Rulison
VOTE : Unanimous
TIME : 9:05 a.m.

MOTION : To go out of Executive Session.
MADE BY : Joseph Semione
SECOND : Bill Sullivan
VOTE : Unanimous
TIME : 9:50 a.m.

V. CLOSE MEETING:

MOTION : To close the meeting.
MADE BY : Fran Reed
SECONDED : Arlene Sitterly
VOTE : Unanimous
TIME : 9:51 a.m.